

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DARREL WAYNE FOTH, Respondent

Pharmacist License No. RPH 52592

Agency Case No. 6889

OAH No. 2020100090

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 28, 2021.

It is so ORDERED on March 29, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over the printed name and title.

By

Greg Lippe
Board President

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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13 In the Matter of the Accusation Against:

14 **DARREL WAYNE FOTH**

15 **P.O. Box 22272**
Sacramento, CA 95822

16 **Pharmacist License No. RPH 52592**

17 Respondent.
18

Case No. 6889

OAH No. 2020100090

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
24 (Board). She brought this action solely in her official capacity and is represented in this matter by
25 Xavier Becerra, Attorney General of the State of California, by Andrew M. Steinheimer, Deputy
26 Attorney General.

27 2. Respondent Darrel Wayne Foth (Respondent) is represented in this proceeding by
28 attorney Paul Chan, whose address is: 1851 Heritage Lane, Suite 128,

1 Sacramento, CA 95815-4996

2 3. On or about August 31, 2001, the Board issued Pharmacist License No. RPH 52592
3 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the
4 charges brought in Accusation No. 6889, and will expire on April 30, 2021, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 6889 was filed before the Board, and is currently pending against
7 Respondent. The Accusation and all other statutorily required documents were properly served
8 on Respondent on July 16, 2020. Respondent timely filed his Notice of Defense contesting the
9 Accusation.

10 5. A copy of Accusation No. 6889 is attached as exhibit A and incorporated herein by
11 reference.

12 **ADVISEMENT AND WAIVERS**

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 6889. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

17 7. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 **CULPABILITY**

26 9. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. 6889.

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10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 52592 issued to Respondent Darrel Wayne Foth is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy- two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed,

1 probation shall be automatically extended until such time as the final report is made and accepted
2 by the board.

3 **3. Interview with the Board**

4 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
5 with the board or its designee, at such intervals and locations as are determined by the board or its
6 designee. Failure to appear for any scheduled interview without prior notification to board staff,
7 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
8 the period of probation, shall be considered a violation of probation.

9 **4. Cooperate with Board Staff**

10 Respondent shall timely cooperate with the board's inspection program and with the board's
11 monitoring and investigation of respondent's compliance with the terms and conditions of his
12 probation, including but not limited to: timely responses to requests for information by board
13 staff; timely compliance with directives from board staff regarding requirements of any term or
14 condition of probation; and timely completion of documentation pertaining to a term or condition
15 of probation. Failure to timely cooperate shall be considered a violation of probation.

16 **5. Continuing Education**

17 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
18 pharmacist as directed by the board or its designee.

19 **6. Reporting of Employment and Notice to Employers**

20 During the period of probation, respondent shall notify all present and prospective
21 employers of the decision in case number 6889 and the terms, conditions and restrictions imposed
22 on respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
24 undertaking any new employment, respondent shall report to the board in writing the name,
25 physical address, and mailing address of each of his employer(s), and the name(s) and telephone
26 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated
27 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work
28 schedule, if known. Respondent shall also include the reason(s) for leaving the prior

1 employment. Respondent shall sign and return to the board a written consent authorizing the
2 board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and
3 authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,
4 concerning respondent's work status, performance, and monitoring. Failure to comply with the
5 requirements or deadlines of this condition shall be considered a violation of probation.

6 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
7 respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b)
8 his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
9 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the
10 board in writing acknowledging that the listed individual(s) has/have read the decision in case
11 number 6889, and terms and conditions imposed thereby. If one person serves in more than one
12 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
13 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
14 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
15 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in
16 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
17 in case number 6889, and the terms and conditions imposed thereby.

18 If respondent works for or is employed by or through an employment service, respondent
19 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
20 of the decision in case number 6889, and the terms and conditions imposed thereby in advance of
21 respondent commencing work at such licensed entity. A record of this notification must be
22 provided to the board upon request.

23 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
24 (15) days of respondent undertaking any new employment by or through an employment service,
25 respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service
26 to report to the board in writing acknowledging that he or she has read the decision in case
27 number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to
28 ensure that these acknowledgment(s) are timely submitted to the board.

1 Failure to timely notify present or prospective employer(s) or failure to cause the identified
2 person(s) with that/those employer(s) to submit timely written acknowledgments to the board
3 shall be considered a violation of probation.

4 "Employment" within the meaning of this provision includes any full-time, part-time,
5 temporary, relief, or employment/management service position as a Pharmacist, or any position
6 for which a Pharmacist License is a requirement or criterion for employment, whether the
7 respondent is an employee, independent contractor or volunteer.

8 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

9 Respondent shall further notify the board in writing within ten (10) days of any change in
10 name, residence address, mailing address, e-mail address or phone number.

11 Failure to timely notify the board of any change in employer, name, address, or phone
12 number shall be considered a violation of probation.

13 **8. Restrictions on Supervision and Oversight of Licensed Facilities –**

14 During the period of probation, respondent shall not supervise any intern pharmacist, be the
15 pharmacist-in-charge, designated representative-in-charge, responsible manager or other
16 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
17 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

18 **9. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, respondent shall pay to the
20 board its costs of investigation and prosecution in the amount of \$7,455.00.

21 Respondent shall be permitted to pay these costs in a payment plan approved by the board
22 or its designee, so long as full payment is completed no later than one (1) year prior to the end
23 date of probation. Failure to pay costs by the deadline(s) as directed shall be considered a
24 violation of probation.

25 **10. Probation Monitoring Costs**

26 Respondent shall pay any costs associated with probation monitoring as determined by the
27 board each and every year of probation. Such costs shall be payable to the board on a schedule as
28 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall

1 be considered a violation of probation.

2 **11. Status of License**

3 Respondent shall, at all times while on probation, maintain an active, current Pharmacist
4 License with the board, including any period during which suspension or probation is tolled.
5 Failure to maintain an active, current Pharmacist License shall be considered a violation of
6 probation.

7 If respondent's Pharmacist License expires or is cancelled by operation of law or otherwise
8 at any time during the period of probation, including any extensions thereof due to tolling or
9 otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and
10 conditions of this probation not previously satisfied.

11 **12. License Surrender While on Probation/Suspension**

12 Following the effective date of this decision, should respondent cease practice due to
13 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
14 respondent may relinquish his license, including any indicia of licensure issued by the board,
15 along with a request to surrender the license. The board or its designee shall have the discretion
16 whether to accept the surrender or take any other action it deems appropriate and reasonable.
17 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to
18 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
19 become a part of the respondent's license history with the board.

20 Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall
21 license, including any indicia of licensure not previously provided to the board within ten (10)
22 days of notification by the board that the surrender is accepted if not already provided.
23 Respondent may not reapply for any license from the board for three (3) years from the effective
24 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
25 of the date the application for that license is submitted to the board, including any outstanding
26 costs.

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1 **13. Practice Requirement – Extension of Probation**

2 Except during periods of suspension, respondent shall, at all times while on probation, be
3 employed as a Pharmacist in California for a minimum of 80 hours per calendar month. Any
4 month during which this minimum is not met shall extend the period of probation by one month.
5 During any such period of insufficient employment, respondent must nonetheless comply with all
6 terms and conditions of probation, unless respondent receives a waiver in writing from the board
7 or its designee.

8 If respondent does not practice as a Pharmacist in California for the minimum number of
9 hours in any calendar month, for any reason (including vacation), respondent shall notify the
10 board in writing within ten (10) days of the conclusion of that calendar month. This notification
11 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the
12 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume
13 practice at the required level. Respondent shall further notify the board in writing within ten (10)
14 days following the next calendar month during which respondent practices as a Pharmacist in
15 California for the minimum of hours. Any failure to timely provide such notification(s) shall be
16 considered a violation of probation.

17 It is a violation of probation for respondent's probation to be extended pursuant to the
18 provisions of this condition for a total period, counting consecutive and non-consecutive months,
19 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
20 probation period on its website.

21 **14. Violation of Probation**

22 If respondent has not complied with any term or condition of probation, the board shall
23 have continuing jurisdiction over respondent, and the board shall provide notice to respondent
24 that probation shall automatically be extended, until all terms and conditions have been satisfied
25 or the board has taken other action as deemed appropriate to treat the failure to comply as a
26 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
27 board or its designee may post a notice of the extended probation period on its website.

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1 If respondent violates probation in any respect, the board, after giving respondent notice
2 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
3 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
4 probation, or the preparation of an accusation or petition to revoke probation is requested from
5 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
6 probation shall be automatically extended until the petition to revoke probation or accusation is
7 heard and decided.

8 **15. Completion of Probation**

9 Upon written notice by the board or its designee indicating successful completion of
10 probation, respondent's license will be fully restored.

11 **16. Pharmacists Recovery Program (PRP)**

12 By no later than ten (10) days after the effective date of this decision, respondent shall have
13 completed all of the following: contacted the Pharmacists Recovery Program (PRP) for
14 evaluation; enrolled in the PRP; completed, signed, and returned the treatment contract as well as
15 any addendums required or suggested by the PRP; successfully completed registration for any
16 drug or alcohol testing mandated by the treatment contract and/or by enrollment in the PRP; and
17 begun compliance with the drug or alcohol testing protocol(s). Respondent shall successfully
18 participate in the PRP and complete the treatment contract and any addendums required or
19 suggested by the PRP. The costs for PRP participation shall be borne by the respondent.

20 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
21 the effective date of this decision is no longer considered a self-referral under Business and
22 Professions Code section 4362 (a)(2). Respondent shall successfully participate in and complete
23 his or her current contract and any subsequent addendums with the PRP.

24 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
25 timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid
26 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

27 Any of the following shall result in the automatic suspension of practice by respondent and
28 shall be considered a violation of probation:

1 Failure to contact, complete enrollment, and execute and return the treatment contract with
2 the PRP, including any addendum(s), within ten (10) days of the effective date of the decision as
3 directed by the PRP;

4 Failure to complete registration for any drug or alcohol testing mandated by the treatment
5 contract and/or by the PRP, and begin compliance with the testing protocol(s), within ten (10)
6 days of the effective date of the decision as directed by the PRP;

7 Failure to comply with testing protocols regarding daily check-in and/or failure to complete
8 a mandated test as directed by the PRP;

9 Any report from the PRP of material non-compliance with the terms and conditions of the
10 treatment contract and/or any addendum(s); or

11 Termination by the PRP for non-compliance, failure to derive benefit, or as a public risk.

12 Respondent may not resume the practice of pharmacy until notified by the board in writing.

13 Probation shall be automatically extended until respondent successfully completes the PRP.

14 The board will provide notice of any such suspension or extension of probation.

15 During any suspension, respondent shall not enter any pharmacy area or any portion of the
16 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
17 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
18 any area where dangerous drugs and/or dangerous devices or controlled substances are
19 maintained. Respondent shall not practice as a Pharmacist nor do any act involving drug
20 selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor
21 shall respondent manage, administer, or be a consultant to any licensee of the board, or have
22 access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs
23 and/or dangerous devices or controlled substances.

24 During any suspension, respondent shall not engage in any activity that requires the
25 professional judgment of and/or licensure as a Pharmacist. Respondent shall not direct or control
26 any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or
27 retailing of dangerous drugs and/or dangerous devices or controlled substances.

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1 Failure to comply with any requirement or deadline stated by this term shall be considered a
2 violation of probation.

3 **17. Drug and Alcohol Testing**

4 Respondent, at his own expense, shall participate in testing as directed by the board or its
5 designee for the detection of alcohol, controlled substances, and dangerous drugs and/or
6 dangerous devices. Testing protocols may include biological fluid testing (urine, blood),
7 breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its
8 designee. All testing must be pursuant to an observed testing protocol, unless respondent is
9 informed otherwise in writing by the board or its designee. Respondent may be required to
10 participate in testing for the entire probation period and frequency of testing will be determined
11 by the board or its designee.

12 By no later than thirty (30) days after the effective date of this decision, respondent shall
13 have completed all of the following tasks: enrolled and registered with an approved drug and
14 alcohol testing vendor; provided that vendor with any documentation, and any information
15 necessary for payment by respondent; commenced testing protocols, including all required
16 contacts with the testing vendor to determine testing date(s); and begun testing. At all times,
17 respondent shall fully cooperate with the testing vendor, and with the board or its designee, with
18 regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to
19 cooperate timely shall be considered a violation of probation.

20 Respondent may be required to test on any day, including weekends and holidays.
21 Respondent is required to make daily contact with the testing vendor to determine if a test is
22 required, and if a test is required must submit to testing on the same day.

23 Prior to any vacation or other period of absence from the area where the approved testing
24 vendor provides services, respondent shall seek and receive approval from the board or its
25 designee to use an alternate testing vendor to ensure testing can occur. Upon approval,
26 respondent shall enroll and register with the approved alternate drug testing vendor, provide to
27 that alternate vendor any documentation required by the vendor, including any necessary payment
28 by respondent. During the period of absence of the area, respondent shall commence testing

1 protocols with the alternate vendor, including required daily contacts with the testing vendor to
2 determine if testing is required, and required testing. Any failure to timely seek or receive
3 approval from the board or its designee, or to timely enroll and register with, timely commence
4 testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be
5 considered a violation of probation.

6 Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its
7 designee may require respondent to timely provide documentation from a licensed practitioner
8 authorized to prescribe the detected substance demonstrating that the substance was administered
9 or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such
10 documentation shall be provided by respondent within ten (10) days of being requested.

11 Any of the following shall be considered a violation of probation and shall result in
12 respondent being immediately suspended from practice as a Pharmacist until notified by the board
13 in writing that he may resume practice: failure to timely complete all of the steps required for
14 enrollment/registration with the drug testing vendor, including making arrangements for payment;
15 failure to timely commence drug testing protocols; failure to contact the drug testing vendor as
16 required to determine testing date(s); failure to test as required; failure to timely supply
17 documentation demonstrating that a detected substance was taken pursuant to a legitimate
18 prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or
19 of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the
20 detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In
21 the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a
22 controlled substance or dangerous drug absent documentation that the detected substance was
23 taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee
24 shall inform respondent of the suspension and inform him to immediately leave work, and shall
25 notify respondent's employer(s) and work site monitor(s) of the suspension.

26 During any such suspension, respondent shall not enter any pharmacy area or any portion of
27 the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug
28 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or

1 any area where dangerous drugs and/or dangerous devices or controlled substances are
2 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
3 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
4 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
5 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
6 dangerous devices and controlled substances.

7 During any such suspension, respondent shall not engage in any activity that requires the
8 professional judgment of and/or licensure as a Pharmacist. Respondent shall not direct or control
9 any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or
10 retailing of dangerous drugs and/or dangerous devices.

11 Failure to comply with any such suspension shall be considered a violation of probation.
12 Failure to comply with any requirement or deadline stated by this term shall be considered a
13 violation of probation.

14 **18. Notification of Departure**

15 Prior to leaving the probationary geographic area designated by the board or its designee for
16 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
17 writing of the dates of departure and return. Failure to comply with this provision shall be
18 considered a violation of probation.

19 **19. Abstain from Drugs and Alcohol**

20 Respondent shall completely abstain from the possession or use of alcohol, controlled
21 substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated
22 paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a
23 necessary part of treatment. Respondent shall ensure that he is not in the same physical location
24 as individuals who are using illicit substances even if respondent is not personally ingesting the
25 drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled
26 substances, or their associated paraphernalia for which a legitimate prescription has not been
27 issued as a necessary part of treatment, or any physical proximity to persons using illicit
28 substances, shall be considered a violation of probation.

1 **20. Prescription Coordination and Monitoring of Prescription Use**

2 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
3 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
4 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
5 history with the use of controlled substances, and/or dangerous drugs and who will coordinate and
6 monitor any prescriptions for respondent for dangerous drugs and/or dangerous devices,
7 controlled substances or mood-altering drugs. The approved practitioner shall be provided with a
8 copy of the board's Accusation and decision. A record of this notification must be provided to
9 the board or its designee upon request. Respondent shall sign a release authorizing the
10 practitioner to communicate with the board or its designee about respondent's treatment(s). The
11 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the
12 board on a quarterly basis for the duration of probation regarding respondent's compliance with
13 this condition. If any substances considered addictive have been prescribed, the report shall
14 identify a program for the time limited use of any such substances. The board or its designee may
15 require that the single coordinating physician, nurse practitioner, physician assistant or
16 psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.
17 Should respondent, for any reason, cease supervision by the approved practitioner, respondent
18 shall notify the board or its designee immediately and, within thirty (30) days of ceasing
19 supervision, submit the name of a replacement physician, nurse practitioner, physician assistant,
20 or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to
21 timely submit the selected practitioner or replacement practitioner to the board or its designee for
22 approval, or to ensure the required quarterly reporting thereby, shall be considered a violation of
23 probation.

24 If at any time an approved practitioner determines that respondent is unable to practice
25 safely or independently as a Pharmacist, the practitioner shall notify the board or its designee
26 immediately by telephone and follow up by written letter within three (3) working days. Upon
27 notification from the board or its designee of this determination, respondent shall be
28 automatically suspended and shall not resume practice as a Pharmacist until notified by the board

1 or its designee that practice may be resumed.

2 During any suspension, respondent shall not enter any pharmacy area or any portion of the
3 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
4 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or
5 any area where dangerous drugs and/or dangerous devices or controlled substances are
6 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
7 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
8 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
9 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
10 dangerous devices and controlled substances. Respondent shall not resume practice until notified
11 by the board.

12 During any suspension, respondent shall not engage in any activity that requires the
13 professional judgment and/or licensure as a Pharmacist. Respondent shall not direct or control
14 any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling, or
15 retailing of dangerous drugs and/or dangerous devices or controlled substances.

16 Failure to comply with any requirement or deadline stated by this term shall be considered a
17 violation of probation.

18 **21. Facilitated Group Recovery and/or Support Meetings**

19 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
20 attendance at a group recovery and/or support meeting that is run by a trained facilitator approved
21 in advance by the board or its designee. The required frequency of group meeting attendance
22 shall be determined by the board or its designee. Respondent shall continue regular attendance as
23 directed at an approved facilitated group meeting until the board or its designee advises the
24 respondent in writing that he may cease regular attendance. Respondent shall provide signed and
25 dated documentation of attendance as required with each quarterly report. Failure to attend as
26 required or to submit documentation of attendance shall be considered a violation of probation.

27 If respondent is required to participate in the PRP, compliance with this term can be
28 demonstrated through that program. Where respondent is enrolled in the PRP, participation as

1 required in a facilitated group meeting approved by the PRP shall be sufficient for satisfaction of
2 this requirement. Any deviation from participation requirements for the PRP-approved group
3 shall be considered a violation of probation.

4 **22. Work Site Monitor**

5 Within ten (10) days of the effective date of this decision, respondent shall identify a work
6 site monitor, for prior approval by the board or its designee, who shall be responsible for
7 supervising respondent during working hours. Respondent shall be responsible for ensuring that
8 the work site monitor reports in writing to the board monthly or on another schedule as directed
9 by the board or its designee. Should the designated work site monitor suspect at any time during
10 the probationary period that respondent has abused alcohol or drugs, he or she shall notify the
11 board immediately.

12 In the event of suspected abuse, the monitor shall make at least oral notification within one
13 (1) business day of the occurrence, and shall be followed by written notification within two (2)
14 business days of the occurrence. If, for any reason, including change of employment, respondent
15 is no longer able to be monitored by the approved work site monitor, within ten (10) days
16 respondent shall designate a new work site monitor for approval by the board or its designee.
17 Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure
18 monthly reports are submitted to the board by the monitor, shall be considered a violation of
19 probation.

20 Within thirty (30) days of being approved by the board or its designee, the work site
21 monitor shall sign an affirmation that he or she has reviewed the terms and conditions of
22 respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at
23 least:

- 24 1) Have regular face-to-face contact with respondent in the work environment, at least
25 once per week or with greater frequency if required by the board or its designee;
26 2) Interview other staff in the office regarding respondent's behavior, if applicable; and
27 3) Review respondent's work attendance.

28 //

1 The written reports submitted to the board or its designee by the work site monitor shall
2 include at least the following information: respondent's name and license number; the monitor's
3 name, license number (if applicable) and work site location; the date(s) the monitor had face-to-
4 face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on
5 any changes in respondent's behavior or personal habits; notes on any indicators that may lead to
6 substance abuse; and the work site monitor's signature.

7 Respondent shall complete the required consent forms and sign an agreement with the work
8 site monitor and the board to allow the board to communicate with the work site monitor.

9 It is a condition of respondent's enrollment in the Pharmacists Recovery Program (PRP)
10 that he is required to have a work site monitor approved by the PRP who shall be responsible for
11 supervising respondent during working hours. Respondent shall be responsible for ensuring that
12 the work site monitor reports in writing to the PRP monthly or on another schedule as directed by
13 the PRP. Should the designated work site monitor suspect at any time during the probationary
14 period that respondent has abused alcohol or drugs, he or she shall notify the PRP immediately.
15 The initial notification shall be made orally within one (1) business day of the occurrence, which
16 shall be followed by written notification within two (2) business days of the occurrence. If, for
17 any reason, including change of employment, respondent is not longer able to be monitored by
18 the approved work site monitor, within ten (10) days of commencing new employment for prior
19 approval by the PRP. Failure to identify an acceptable initial or replacement work site monitor, or
20 to ensure monthly reports are submitted to the PRP by the work site monitor, shall be considered
21 a violation of probation.

22 Within thirty (30) days of being approved by the PRP, the work site monitor shall sign an
23 affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary
24 order and agrees to monitor respondent. The work site monitor shall at least:

- 25 1) Have regular face-to-face contact with respondent in the work environment, at least
26 once per week or with greater frequency if required by the board or its designee;
- 27 2) Interview other staff in the office regarding respondent's behavior, if applicable; and
- 28 3) Review respondent's work attendance.

1 The written reports submitted to the PRP by the work site monitor shall include at least the
2 following information: respondent's name and license number; the monitor's name, license
3 number (if applicable) and work site location; the date(s) the monitor had face-to-face contact
4 with respondent; the staff interviewed, if applicable; an attendance report; notes on any changes
5 in respondent's behavior or personal habits; notes on any indicators that may lead to substance
6 abuse; and the work site monitor's signature.

7 Respondent shall complete the required consent forms and sign an agreement with the work
8 site monitor and the board to allow the board to communicate with the work site monitor.

9 23. Supervised Practice

10 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
11 board or its designee, for prior approval, the name of a Pharmacist by and not on probation with
12 the board, to serve as respondent's practice supervisor. As part of the documentation submitted,
13 respondent shall cause the proposed practice supervisor to report to the board in writing
14 acknowledging that he or she has read the decision in case number 6889, and is familiar with the
15 terms and conditions imposed thereby, including the level of supervision required by the board or
16 its designee. This level will be determined by the board or its designee, will be communicated to
17 the respondent on or before the effective date of this decision and shall be one of the following:

18 Continuous – At least 75% of a work week

19 Substantial - At least 50% of a work week

20 Partial - At least 25% of a work week

21 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

22 Respondent may practice only under the required level of supervision by an approved
23 practice supervisor. If, for any reason, including change of employment, respondent is no longer
24 supervised at the required level by an approved practice supervisor, within ten (10) days of this
25 change in supervision respondent shall submit to the board or its designee, for prior approval, the
26 name of a Pharmacist by and not on probation with the board, to serve as respondent's
27 replacement practice supervisor. As part of the documentation submitted, respondent shall cause
28 the proposed replacement practice supervisor to report to the board in writing acknowledging that

1 he or she has read the decision in case number 6889, and is familiar with the terms and conditions
2 imposed thereby, including the level of supervision required.

3 Any of the following shall result in the automatic suspension of practice by a respondent
4 and shall be considered a violation of probation:

5 Failure to nominate an initial practice supervisor, and to have that practice supervisor report
6 to the board in writing acknowledging the decision, terms and conditions, and supervision level,
7 within thirty (30) days;

8 Failure to nominate a replacement practice supervisor, and to have that practice supervisor
9 report to the board in writing acknowledging the decision, terms and conditions, and supervision
10 level, within ten (10) days;

11 Practicing in the absence of an approved practice supervisor beyond the initial or
12 replacement nomination period; or

13 Any failure to adhere to the required level of supervision.

14 Respondent shall not resume practice until notified in writing by the board or its designee.

15 During any suspension, respondent shall not enter any pharmacy area or any portion of the
16 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
17 retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or
18 any area where dangerous drugs and/or dangerous devices or controlled substances are
19 maintained. Respondent shall not practice pharmacy nor do any act involving drug selection,
20 selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall
21 respondent manage, administer, or be a consultant to any licensee of the board, or have access to
22 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or
23 dangerous devices or controlled substances.

24 During any suspension, respondent shall not engage in any activity that requires the
25 professional judgment and/or licensure as a Pharmacist. Respondent shall not direct or control
26 any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or
27 retailing of dangerous drugs and/or dangerous devices or controlled substances.

28 Failure to comply with any suspension shall be considered a violation of probation.

Any of the following shall be considered a violation of probation: failure to timely nominate either an initial or a replacement practice supervisor; failure to cause the practice supervisor to timely report to the board in writing acknowledging the decision, terms and conditions, and supervision level; practicing in the absence of an approved practice supervisor after lapse of the nomination period; and/or failure to adhere to the level of supervision required by the board or its designee. If any of these obligations or prohibitions is not met, respondent shall be prohibited from practice as a Pharmacist and may not resume such practice until notified by the board or its designee in writing.

24. No Ownership or Management of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Paul Chan. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____

DARREL WAYNE FOTH
Respondent

I have read and fully discussed with Respondent Darrel Wayne Foth the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

PAUL CHAN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DAVID E. BRICE
Supervising Deputy Attorney General

ANDREW M. STEINHEIMER
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

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DATED: _____

DARREL WAYNE FOTH
Respondent

I have read and fully discussed with Respondent Darrel Wayne Foth the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

PAUL CHAN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: _____ 1/26/2021 _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DAVID E. BRICE
Supervising Deputy Attorney General

/s/ Andrew Steinheimer

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ANDREW M. STEINHEIMER
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 6889

1 XAVIER BECERRA
Attorney General of California
2 DAVID E. BRICE
Supervising Deputy Attorney General
3 ANDREW M. STEINHEIMER
Deputy Attorney General
4 State Bar No. 200524
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7892
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 6889

13 **DARREL WAYNE FOTH**

14 **4495 Mack Rd.**
15 **Sacramento, CA 95823**

ACCUSATION

16 **Pharmacist License No. RPH 52592**

17 Respondent.

18
19 **PARTIES**

20 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

22 2. On or about August 31, 2001, the Board issued Pharmacist License Number RPH
23 52592 to Darrel Wayne Foth (Respondent). The Pharmacist License was in full force and effect
24 at all times relevant to the charges brought herein and will expire on April 30, 2021, unless
25 renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code (Code) unless otherwise

1 indicated.

2 4. Section 4300 of the Code states in pertinent part:

3 (a) Every license issued may be suspended or revoked.

4 (b) The board shall discipline the holder of any license issued by the board,
5 whose default has been entered or whose case has been heard by the board and found
6 guilty, by any of the following methods:

7 (1) Suspending judgment.

8 (2) Placing him or her upon probation.

9 (3) Suspending his or her right to practice for a period not exceeding one year.

10 (4) Revoking his or her license.

11 (5) Taking any other action in relation to disciplining him or her as the board in
12 its discretion may deem proper.

13 ...

14 (e) The proceedings under this article shall be conducted in accordance with
15 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
16 Government Code, and the board shall have all the powers granted therein. The
17 action shall be final, except that the propriety of the action is subject to review by the
18 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

19 5. Section 4300.1 of the Code states:

20 The expiration, cancellation, forfeiture, or suspension of a board-issued license
21 by operation of law or by order or decision of the board or a court of law, the
22 placement of a license on a retired status, or the voluntary surrender of a license by a
23 licensee shall not deprive the board of jurisdiction to commence or proceed with any
24 investigation of, or action or disciplinary proceeding against, the licensee or to render
25 a decision suspending or revoking the license.

26 **STATUTORY PROVISIONS**

27 6. Section 4060 of the Code states in pertinent part:

28 A person shall not possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not
apply to the possession of any controlled substance by a manufacturer, wholesaler,
third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist,
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
practitioner, or physician assistant, if in stock in containers correctly labeled with
the name and address of the supplier or producer.

7. Section 4301 of the Code states in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

8. Section 4327 of the Code states: “Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.”

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, (Regulations) section 1714, subdivision (d), states:

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

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1 17. Respondent returned to work in mid-September 2019, but then resigned from
2 Walgreens on October 7, 2019.

3 18. On or about November 5, 2019, Board investigator J.F., conducted a telephone
4 interview with Respondent. During the call, Respondent admitted that he took one tablet of
5 Adderall (amphetamine-dextroamphetamine mixed salts) and four tablets of Percocet
6 (oxycodone) from the safe at work. Respondent stated the medications were expired or had been
7 returned and were waiting to be destroyed. Respondent admitted consuming the medications over
8 the weekend prior to the random drug test, which occurred on a Monday, and stated "I guess the
9 substances were not out of my system yet."

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Consumption of Stolen Controlled Substances)**

12 19. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
13 Code section 4301, subdivision (j), in that Respondent violated Code section 4060 and Health and
14 Safety Code section 11170 when he removed controlled substances Oxycodone and
15 Amphetamine-dextroamphetamine from the safe at his place of employment and consumed them.
16 The circumstances are set forth in paragraphs 15 and 18, above.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Self- Administration of Controlled Substance to an Extent or in a**
19 **Manner to be Dangerous to Self or Others)**

20 20. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
21 Code section 4301, subdivision (h), in that Respondent self-administered the controlled substance
22 Oxycodone and Amphetamine-dextroamphetamine to an extent or in a manner as to be dangerous
23 or injurious to himself or others. The circumstances are set forth in paragraphs 15 and 18, above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

26 21. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
27 Code section 4301, subdivision (f), in that on or about a date unknown prior to June 10, 2019,
28 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption,

1 when he stole Oxycodone and Amphetamine-dextroamphetamine from his place of employment
2 as set forth in paragraphs 15 and 18, above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Public Endangerment)**

5 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
6 in that Respondent violated Code section 4327 when he tested positive for controlled substances
7 Oxycodone and Amphetamine-dextroamphetamine while at work. The circumstances are set
8 forth in paragraphs 15 and 18, above.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Security of Controlled Substances)**

11 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
12 in that Respondent violated Regulations section 1714(d), when he removed controlled substances
13 Oxycodone and Amphetamine-dextroamphetamine from the safe at his place of employment and
14 consumed them. The circumstances are set forth in paragraphs 15 and 18, above.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Violating Laws Governing Pharmacy)**

17 24. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
18 Code section 4301, subdivision (o), in that Respondent violated Code section 4060, Health and
19 Safety Code section 11170, and Regulations section 1714(d), as set forth above.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Pharmacy issue a decision:

23 1. Revoking or suspending Pharmacist Number RPH 52592, issued to Darrel Wayne
24 Foth;

25 2. Ordering Darrel Wayne Foth to pay the Board of Pharmacy the reasonable costs of
26 the investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: July 15, 2020



ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SA2020100103